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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,100

07/14/2006

Ali N. Syed

AV-6.1

1720

2387 7590 10/19/2009

Olson & Cepuritis, LTD.

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CHICAGO, IL 60606

EXAMINER

LEA, CHRISTOPHER RAYMOND

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

10/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/586,100

Applicant(s)

SYED ET AL.

Examiner

Christopher R. Lea

Art Unit

1619

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Ernst V Arnold/
Primary Examiner, Art Unit 1616

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not found persuasive. Applicant argues that the list of conditioners in Cincotta is too long to support a determination of obviousness. The examiner disagrees because Shultz teaches adding one or more conditioners to the powdery bleaching composition; therefore, it would have been prima facie obvious to use any combination of conditioners taught by Cincotta in the composition (certainly a specific combination would be unobvious if it presented unexpected results). Applicant argues that the skilled artisan would not be motivated to look to Cincotta for conditioners since there is no teaching, suggestion, or motivation to admix the composition of Cincotta with an aqueous medium. The examiner disagrees in that Cincotta teaches applying the conditioning composition to wet hair (paragraph 30), so Cincotta clearly envisions the nonaqueous composition to come in contact with water. Applicant argues that the skilled artisan would not be motivated to add a hair protectant since Syed teach it is applied concurrently with subsequent treatment. The examiner does not find this convincing as clearly all but the very first treatment of a user's life is a subsequent treatment, and it would therefore have been obvious to include the hair protectant in the treatment medium to cover these subsequent treatments. Finally applicant has argued that the specification shows data demonstrating unexpected results. The examiner acknowledges the data in the specification; however, it fails to establish unexpected results for the following reasons. First, it is not commensurate in scope with the broadest claimed subject matter, i.e. the results are only for compositions with SFC consisting of 16-17% glyceryl cocoate/citrate/lactate, 33-34% PEG-40 sorbitan peroleate, and 50% caprylic/capric triglyceride. Second, there is no comparison to the closest prior art; in fact, the only comparison is to a composition lacking conditioners, and with such a comparison, it is not unexpected that the hair treated with conditioners is in better shape than the unconditioned hair. A particularly strong case for allowability could be made if the composition possessing the combination of conditioners was compared to compositions containing each of the conditioner components alone and/or in pairs. Absent such factually-supported objective evidence, the rejections are maintained. Claims 4, 18, 19 and 21-23 remain withdrawn and claims 1, 3, 8-17, 24, 25, 28-31, 33 and 35-40 remain rejected.